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In re Application of :
Bosten et al. :
Application No. 10/766,482 :
Filed: 29 January, 2004 :
Atty Docket No. 54525.000096 :

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed on 13 January, 2006.

This application was held abandoned for failure to timely reply to a non-final Office action mailed on 29 October, 2004. The Notice of Abandonment mailed on 9 December, 2005, stated that the amendment filed on 29 April, 2005 was held non-responsive and that applicant had not taken further action within the period for response.

On 13 January, 2006, the present petition was filed, accompanied by a five (5) month extension of time.

Petitioners assert that the period for reply did not expire until 13 January, 2006, and that, in essence, the Notice of Abandonment mailed on 9 December, 2005, was mailed prematurely. Petitioners states that a continuing application was filed on 13 January, 2006.

A review of the record reveals that on 29 April, 2005, an amendment was filed in response to a non-final Office action mailed on 29 October, 2004. In response, on 13 July, 2005, a Notice of Non-Compliant Amendment was mailed.

The Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on 13 July, 2005, states, in pertinent part

Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice

to supply the corrected section of the non-compliant amendment in compliance with 37 CFR 121, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment...

Extensions of time are available under 37 CFR 1.136(a) only if the non-complaint amendment is a nonfinal amendment or an amendment filed in response to a Quayle action.

Therefore, petitioners are correct that the time period for reply could be extended for five (5) months, through 13 January, 2006. As a five (5) month extension of time was filed on 13 January, 2006, the application was pending on 13 January, 2006.

Of course, if no reply was submitted on or before 13 January, 2006, the application became abandoned as of midnight 13 January, 2006, for failure to timely reply to the Notice mailed on 13 January, 2006. If petitioners timely filed a continuing application, this application would be abandoned in favor of the continuing application.

As such, the petition is **granted** to the extent indicated.

The Notice of Abandonment mailed on 9 December, 2005, is **vacated**.

The application is referred to Technology Center 3700 for further processing, including mailing a new Notice of Abandonment.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.



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